



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 1720-00

22 September 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 20 April 1992 for four years at age 20. The record reflects you extended your enlistment twice for a total of 39 months, were advanced to HT3 (E-4), and served without incident until 10 February 1999. On that date, you were counseled for substandard dress and appearance.

On 18 February 1999 you were awarded a letter of instruction for correcting your substandard performance, specifically, deficiencies in professional knowledge, quality of work, military bearing and character, personal job accomplishment, and leadership. The following month, you were counseled again about your appearance.

On 28 April 1999 you submitted a special request chit for a closed captain's mast regarding a special evaluation and reenlistment opportunities. The request was approved. However,

you apparently did not get to see the commanding officer (CO) and then submitted a request to see the admiral. Your request was denied until after you saw the CO.

You received an adverse Evaluation Report and Counseling Record for the reporting period of 2 October 1998 to 15 June 1999. You were assigned an adverse mark of 1.0 in professional knowledge. The reporting senior noted that excessive counseling was required in the areas of uniform appearance, rating knowledge and military bearing and leadership; excessive supervision was required because you could not be relied upon to complete assignments correctly; and you were repeatedly late for duty. Your performance was well below that of your peers and that expected of a seasoned HT3. You were not recommended for retention.

On 14 July 1999 you filed a complaint of wrongs under Article 138 of the Uniform Code of Military Justice because you received a negative evaluation with no previous counseling for adverse performance; your request to see the CO was denied; you were forced to sign your DD Form 214 under duress; your reenlistment code was changed from RE-1 to RE-4; your request to take E-5 examination for promotion was denied; you were subjected to undue harassment, daily berating, and hostile work environment; and you were denied assistance by the chain of command when you sought recourse for perceived wrongs.

On 19 July 1999 you were honorably released from active duty, transferred to the Naval Reserve and assigned an RE-4 reenlistment code.

On 5 August 1999, a preliminary inquiry was conducted into your complaint of wrongs. The investigating officer (IO) found that you had been initially assigned an RE-1 reenlistment code, but it was changed to an RE-4 after your service record was reviewed. The IO also found that you had received numerous verbal counselings to correct qualifications and uniform deficiencies, your leading petty officer (LPO) never promised you a special evaluation, and the LPO considered you an administrative burden and supported the chain of command's decision to separate you at the expiration of your enlistment. Your allegations against a certain chief warrant officer were unsubstantiated. The CO concurred with the IO's recommendation that no further investigation was warranted.

On 24 August 1999, the CO advised you that the allegations in your complaint were fully examined and provided you with a copy of the results of that investigation. He stated that you were assigned an RE-4 reenlistment code since you were not recommended for reenlistment.

You were honorably discharged upon completion of your obligated service on 25 September 1996.

Regulations require the assignment of an RE-4 reenlistment code to individuals who are not recommended for reenlistment. The Board noted the letter of reference, the 30 percent combined disability rating granted by the Department of Veterans Affairs, and the service record documents submitted in support of your application. The Board is reluctant to substitute its judgment for that of the CO who is on the scene and is best qualified to determine who should be reenlisted. No one has an inherent right to be reenlisted. The Board concluded that formal counseling on three occasions, a letter of instruction, and an adverse evaluation report provided sufficient justification for the CO's non-recommendation for retention and assignment of an RE-4 reenlistment code. The Board thus concluded that the reenlistment code was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director